

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

KATAHDIN PAPER COMPANY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV-05-64-B-W
	)	
U&R SYSTEMS, INC.,	)	
	)	
Defendant.	)	

**ORDER ON NOTICE OF DAMAGES HEARING**

On May 4, 2005, Plaintiff Katahdin Paper Company, LLC (Katahdin) filed a Complaint against Defendant U & R Systems, Inc. (U & R), alleging that it sustained damages as a consequence of U & R's breaches of contract and express and implied warranties relating to its purchase of a mechanized ash rake system from U & R. Despite having been served with process on May 18, 2005 (Docket # 4), U & R failed to appear or otherwise defend the law suit and was defaulted on June 9, 2005 (Docket # 6). Katahdin has filed a Motion for Default Judgment, requesting that the default be reduced to judgment and has filed affidavits itemizing its claims for damages.

Under Rule 55(b)(2), upon application of the defaulting party, the Court may enter a judgment against a defaulted party. Fed. R. Civ. P. 55(b)(2). However, if the defaulted party has entered an appearance, it is entitled to "written notice of the application for judgment at least 3 days prior to the hearing on such application." *Id.* In *Key Bank v. Tablecloth Textile Co.*, 74 F.3d 349 (1st Cir. 1996), the First Circuit discussed when it is that a party who has not formally entered a written appearance is entitled to notice of a Rule 55(b)(2) damages hearing. It stated that "(a)lthough appearance in an action typically involves some presentation or submission to

the court - - a feature missing here - - we have held that a defaulting party ‘has appeared’ for Rule 55 purposes if it has ‘indicated to the moving party a clear purpose to defend the suit.’” *Id.* at 353; *see Muniz v. Vidal*, 739 F.2d 699, 700 (1st Cir. 1984). Katahdin’s Complaint reflects contact (albeit unsuccessful) with U & R after the installation of the mechanical ash removal system and, in view of *Key Bank*, this Court ORDERS Katahdin within seven days of the date of this Order to elect between the following:

- 1) request the scheduling of a damages hearing and give U & R formal notice of the hearing in accordance with Fed. R. Civ. P. 55(b)(2); *see Reynolds v. Bar Harbor Whale Watch Co.*, 2001 U.S. Dist. LEXIS 23512 at \*2 ( D. Me. 2001)(“On October 26, 2000, Plaintiff’s counsel attempted to notify the defaulted Defendant of the impending damages hearing.”); or,
- 2) file an Affidavit setting forth facts sufficient for this Court to conclude that the First Circuit’s concerns in *Key Bank* have been satisfied and rest on the previously filed Affidavits in lieu of a damages hearing.

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 9th day of August, 2005

**Plaintiff**

**KATAHDIN PAPER COMPANY  
LLC**

represented by **JONATHAN G. MERMIN**  
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V.

**Defaulted Party**

**U&R SYSTEMS INC**